

DONNIE RAY SANDERS §
v. § CIVIL ACTION NO. 9:12cv18
DIRECTOR, TDCJ-CID §

The Petitioner Donnie Ray Sanders, proceeding *pro se*, filed this application for the writ of habeas corpus challenging the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Sanders was convicted of three counts of aggravated assault on July 20, 2010, receiving concurrent sentences of 30 years in prison. He filed a direct appeal, which was dismissed after counsel filed an Anders brief, and did not seek discretionary review. While his direct appeal was still pending, Sanders filed a state habeas corpus petition, which was dismissed because his direct appeal was pending. He then filed his federal habeas petition.

The Respondent was ordered to answer the petition and filed a motion to dismiss for failure to exhaust state remedies. Sanders filed a response to the motion to dismiss, but this response addressed the merits of his claims and did not mention the exhaustion issue.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted and that the petition be dismissed without prejudice for failure to exhaust state remedies. Sanders received a copy of this Report on October 24, 2012, but filed no

objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 21) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED without prejudice for failure to exhaust state remedies. It is further

ORDERED that the Petitioner Donnie Sanders is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate refers only to an appeal of the present habeas petition and shall have no effect upon Sanders' right to present his claims to the courts of the State of Texas, or to thereafter seek relief in federal court in the event that he does not obtain the relief he seeks in state court. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

So **ORDERED** and **SIGNED** on January 6, 2013.



Ron Clark
United States District Judge